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CC Docket 94-102

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively, “Leap”), hereby amends its Petition for Partial Waiver of the Commission’s E-911 Phase II Implementation Milestones, filed August 27, 2001 (the “Petition”), as amended in accordance with its Amendment to Petition for Waiver, filed April 19, 2002 (the “Initial Amendment”). Since Leap filed its Initial Amendment, the vendor that Leap selected to provide Phase II Positioning Information services to Leap has encountered delays in completing its Phase II solution. As explained in more detail below, the vendor has not yet received a commercial version of software it will license from a third party. The software is required for the vendor to deliver accurate Position Information to Leap. As a result, Leap must amend its Petition to provide for a modified implementation timetable. Leap therefore seeks a partial waiver of the Commission’s rules to permit Leap to adopt and implement the alternative plan outlined herein.

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## **I. Waiver is Appropriate Under These Circumstances.**

The Commission may waive any of its rules for good cause shown.<sup>1</sup> In the context of E-911 implementation, the Commission has recognized that “factors outside [a carrier’s] control” might prevent a carriers from timely implementing E-911 Phase II.<sup>2</sup> The Commission has indicated that in such cases, particularly where “technology-related issues” or other circumstances prevent timely compliance, “individual waivers” may be appropriate.<sup>3</sup> This policy is in keeping with the Commission’s general practice: it has consistently recognized that “bringing a new product to market requires manufacturers to undertake a time-consuming series of complex steps.”<sup>4</sup> And therefore it has often waived compliance deadlines for its licensees when manufacturers cannot make products available in time.<sup>5</sup>

In light of the important safety goals of Enhanced 911, the Commission has stated that it will grant only waivers that are “focused and limited in scope, and with a clear path to full compliance.”<sup>6</sup> The Commission also has indicated that carriers must document the “concrete steps” a carrier has made and will make towards compliance.<sup>7</sup>

Leap’s waiver request falls squarely within this standard for relief. Leap has investigated all manner of possible E-911 solutions, and has made great strides towards implementing its chosen solution. However, because of unexpected delays due to factors beyond

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<sup>1</sup> See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>2</sup> Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Calling Systems, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd. 17442 ¶ 45 (2000) (“*Fourth MO&O*”).

<sup>3</sup> *Id.* ¶ 43.

<sup>4</sup> *GARMIN International, Inc. Order on Reconsideration*, DA 01-851 ¶ 6 (2001).

<sup>5</sup> See, e.g., Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment, 9 FCC Rcd. 1981 ¶¶ 76-77 (1994) (compliant cable boxes not available from equipment makers).

<sup>6</sup> *Id.* ¶ 44.

<sup>7</sup> *Id.*

its control, it will be unable to deliver accurate location information within the timeframe outlined in its Petition and the Initial Amendment.

## **II. LEAP MAY BE UNABLE TO DELIVER ACCURATE POSITION INFORMATION BEFORE DECEMBER 31, 2002**

An integral part of any carrier's E911 solution is a Mobile Positioning Center ("MPC") and Position Determining Equipment ("PDE"). When a 911 call comes into the switch, it is routed to the MPC and from there to the PDE. The PDE converts the raw data provided by the handset and network equipment into a specific geographic location and puts it in a form usable by emergency responders. The PDE then delivers the location information back to the MPC, which then routes the call to the appropriate Public Safety Answering Point ("PSAP").

Leap has chosen to outsource the PDE and MPC function to a third party vendor, Telecommunications Systems, Inc. ("TCS"), formerly known as XYPoint. TCS is now the industry leader for providing such solutions, and was chosen by Leap because of its proven ability to provide reliable E911 solutions, and because Leap is currently using TCS in connection with its E911 Phase I compliance. TCS in turn is obtaining the PDE software element of its Phase II software solution from another vendor, SnapTrack Inc. ("SnapTrack"), a QUALCOMM company.

Unfortunately, TCS now expects to receive a commercially-available version of the SnapTrack PDE software needed to implement TCS's solution for Leap later than it expected when Leap filed the Initial Amendment. Since TCS has not yet received this PDE software, a necessary element of its Phase II solution, and has not yet been able to test that software, the date on which Leap will be able to fully implement Phase II service in response to requests from PSAPs is uncertain. At a minimum, the following actions need to occur before Leap can deliver location information to PSAPs:

- SnapTrack must complete the commercial version of its PDE software (including the required interface with TCS's MPC software) and deliver the commercial version to TCS.
- TCS must integrate SnapTrack's PDE software with TCS's MPC software, and test the integrated product to ensure that it produces the correct location information in response to data inputs.
- TCS and Leap must test TCS's Phase II solution in an actual Leap field environment, and calibrate location information relating to each site in Leap's Phase II markets against the position information produced by TCS's MPC/PDE solution in response to positioning input from the field.
- Leap and TCS must test their Phase II solution with each PSAP that has requested Phase II service before providing such service to subscribers in the areas covered by such PSAP.

In general, these steps must be completed serially.

Although the TCS Phase II software system that will be deployed for Leap is not yet finalized, Leap is taking all reasonable action to prepare its network in advance to ensure that Phase II implementation occurs as quickly and as smoothly as possible once TCS's Phase II solution is available. For example, Leap has installed the appropriate software upgrades onto its switches to enable those switches to operate with TCS's Phase II solution once it becomes available. Leap has also begun compiling information for the base station almanac which will be used to assist and supplement the handset-based GPS functionality.

Leap will continue to work diligently to implement all facets of its Phase II solution in a timely manner. However, based upon the PDE / MPC software development and

testing work that is still being performed by third parties, and the uncertainties of when that work will be accomplished, Leap requests that the Commission grant Leap a waiver from its Phase II implementation requirements to allow Leap:

- as soon as reasonably practical and in any event no later than December 31, 2002 to deploy and implement Phase II in its service area within the jurisdiction of at least one PSAP, and
- no later than March 31, 2003 to deliver Phase II location information with respect to areas Leap serves to every PSAP that has validly requested such information at least six months in advance.

### III. CONCLUSION

For these reasons, Leap hereby amends its Petition and respectfully requests that the Commission grant a partial waiver of Section 20.18 of its rules in order to allow Leap to follow the timetable outlined herein.

Respectfully Submitted,

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